

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 676 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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SAROJBEN NILESHBHAI PATEL

Versus

PUSHPABEN ANANDBHAI AMIN

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Appearance:

MR AJ PATEL for Petitioner

MR DF AMIN for Respondent No. 1, 2

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 25/07/96

ORAL JUDGEMENT

Heard Mr Patel for the petitioner and Mr Amin for the respondents. The petitioner and respondent no.1 are

sisters. Amongst others they had a brother named Madhubhai who died in December 1991. The respondent no.2 herein is a son of the respondent no.1. The entire controversy in this matter is about certain lands situated on the outskirts of Ahmedabad in Taluka Kalol, District Mehsana. As of now those lands stand in the name of respondent no.1. It is the case of the petitioner that those lands were purchased by deceased Madhubhai by his money, though in the name of respondent no.1 and that Madhubhai had subsequently handed over the possession thereof to the petitioner. It is on that basis that the petitioner filed Regular Civil Suit No.16 of 1995 in the Court of the learned Civil Judge (Junior Division) at Kalol seeking an injunction restraining respondent no.1 from disturbing the alleged possession of the petitioner of the suit land. The Trial Court granted that injunction. Respondents challenged that order in Civil Misc. Appeal No.210 of 1995. The learned 2nd Joint District Judge, by order dated 30th March 1996, has allowed that appeal and vacated the injunction. Being aggrieved by that order, the petitioner has filed the present revision.

2 As stated above, it is the case of the petitioner - original plaintiff that her brother Madhubhai had purchased the suit lands in the year 1977 though the agreement for sale was executed in the name of respondent no.1. It is also her case that at that time a power of attorney was executed by the original owners of the land, namely, Ambaram Somaji, Hotaji Becharji and others in favour of one Bhailalbai. It is also her case that deceased Madhubhai had paid the entire consideration of the land and that is how through deceased Madhubhai she has been put in possession of this land. The suit was filed on 13th January 1995. On 15th January 1995 a Commissioner was appointed by the trial Court to visit the site and he has reported that some fencing is created on a portion of the land which the petitioner claims to be hers and a Board is also put up stating that the said land is hers. The petitioner has also relied upon some documents which are of the year 1982-83 and 1992. These documents are amongst others a receipt dated 13th August 1983 showing purchase of cement and sand and another one of 2nd September 1983 also indicating similar purchase. These bills are relied to contend that the petitioner put a small shed in the land at that time. A certificate given by one Carpenter who is supposed to be doing the work of fencing dated 5th July 1992 is also produced stating that he had executed the work of putting up the fencing. It is the case of the petitioner that in the year 1982 she had put up some small structure and in the

year 1992 the fencing has been put up in the month of July. She has also relied upon two receipts dated 21st March 1983 and 29th March 1983 showing the purchase of pulses. Based on these documents and the Court Commissioner's report, the petitioner has contended that apart from being the owner of the particular portion of land through deceased Madhubhai she is also in possession thereof and cultivating it.

3 As against that, the respondents have contended that this is a story which is difficult to be believed. As far as the first part is concerned, namely, the ownership of the particular parcel of land through the gift made by deceased Madhubhai, no documentary evidence is produced to show that deceased-Madhubhai had purchased the said land. There is no document executed between deceased-Madhubhai and the petitioner indicating that this land was given to her by Madhubhai. One Bhailalbhai whose affidavit is relied upon by the petitioner and who is supposed to have been given the power of attorney by the original land owners, also does not say in his affidavit unequivocally that any such sale has taken place between the original owners and deceased-Madhubhai. He is a sort of a star witness of the petitioner but, he also states that "it is his belief" that deceased-Madhubhai has sold the concerned land to the petitioner. He however states that deceased-Madhubhai had purchased this land in the name of respondent no.1. The petitioner claims to have paid an amount of Rs.50,000 to respondent no.1 for getting this land from her. Now, if the first respondent has not paid a single paisa for this land and it is so purchased by deceased-Madhubhai only in the name of respondent no.1, there is no occasion for the petitioner to pay this amount of Rs.50,000 to respondent no.1. No doubt, it is true that the petitioner has shown this amount of Rs.50,000 as spent for purchase of this land from respondent no.1 in her income tax documents. But, as stated above, there is no reason to pay this amount to respondent no.1. As against that, respondent no.1 has shown as evidence that this amount was taken merely as a loan from the petitioner. There are so many monetary transactions between the parties and therefore I do not want to go into that aspect. However, for the time being, at the stage of interlocutory application, it certainly cannot be inferred on the basis of such an entry of Rs.50,000 supposed to be the payment to respondent no.1 that the petitioner is the owner of the concerned parcel of land.

4 Similarly, as far as possession thereof is concerned, apart from the certificate of the carpenter

which was given in the year 1992 there is nothing on the record to support that the petitioner is in possession of the suit land. The land very much stands in the name of respondent no.1 in all revenue records. The purchase of cement and sand way back in the year 1982 (indicated through two bills) cannot go to establish that the petitioner had constructed the structure existing in the suit land. Similarly, the two receipts of pulses purchased in the year 1983 cannot go to indicate that the petitioner was cultivating that land. The suit was filed in the year 1995. If for all the years right from 1982 the petitioner is in possession of the parcel of land her evidence is far from satisfactory. As against that, respondent has drawn my attention to the fact that in the month of August 1994, the petitioner had got made number of affidavits in support of her case. This fact cannot be disputed because, those affidavits are very much on the record. If that is so, that fact goes to the support of the respondent's contention that the petitioner was trying to create evidence to contend that she was in exclusive possession of the suit premises. All these factors have been carefully considered by the appellate judge and has rightly interfered with the order of the trial Court in coming to the conclusion that it is the respondent no.1 who is in possession of the suit land and there is no question of granting any injunction against her on the basis a round-about manner in which the ownership and possession is claimed with respect to the suit land. I find no error in the order passed by the appellate court. The Civil Revision Application is therefore rejected. The status quo granted earlier stands vacated.

5 Mr Patel applies for maintenance of status quo for some time to enable the petitioner to carry the matter further. Mr Amin leaves it to the discretion of the Court. The parties will maintain the status quo for a period of eight weeks hereof.
